

Legislative Changes Required
For Hurricane Katrina Response

Agency Name: U.S. Environmental Protection Agency

Legislative language requested:

Amend Clean Air Act section 301 by adding the following subsection (e)

(e) Emergency exemption authority.

(1) **In general.** The Administrator may, at his discretion, exempt any person from any requirement or limitation established by or pursuant to this chapter, including federal requirements created as a result of approval of state permit programs or state implementation plans approved under this chapter, if the Administrator determines (A) that emergency conditions exist [as a result of an Act of God or another event that could not have reasonably been foreseen or prevented,] and (2) that it is in the public interest to grant the exemption in light of those emergency conditions, taking into account the public health and environmental consequences of granting the exemption. The Administrator, in making determinations under this paragraph, shall consult with the Governor of the State or States in which the emergency conditions exist or which would be directly affected by the exemption being considered.

(2) Terms of exemptions.

(A) Any exemption granted under this subsection shall expire on a date to be determined by the Administrator considering relevant factors such as the nature and likely duration of the emergency conditions and the public health and environmental consequences of granting the exemption. The Administrator may extend an exemption beyond its expiration date if he finds it in the public interest to do so.

(B) The Administrator may, at his discretion, subject any exemption granted under this subsection to any conditions that he deems appropriate for the purpose of minimizing the public health and environmental consequences of granting the exemption.

(C) Any condition of an exemption granted under this subsection shall be enforceable in the same manner and to the same extent as the provision for which the exemption is granted.

(D) In the case of provisions that apply to particular geographical areas, the Administrator shall limit the exemption to the smallest geographical area necessary to address the emergency conditions.

(E) The requirements of section 307(d) of this chapter and of 5 U.S.C. sections 553 et seq. shall not apply to the Administrator's action under this subsection. The Administrator shall give appropriate public notice of his actions under this subsection as promptly as is reasonable in light of the circumstances.

Purpose of language: This provision is intended to remedy the currently inadequate Clean Air

Act authority for ensuring that requirements under the Act do not impede an expeditious and successful relief and recovery effort after a major disaster or comparable event. The Act's current waiver provisions are limited to specific portions of the Act that do not encompass the whole universe of potential impediments to relief and recovery. Since it is impossible to predict all of the types of existing requirements that could pose such problems, this provision would intentionally provide broad discretion to the Administrator to determine which requirements should be waived either completely or conditionally. However, the provision also cabins the Administrator's discretion to remedying the emergency conditions requiring such waivers.

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Agency Name: U.S. Environmental Protection Agency

Legislative language requested:

Amend Clean Air Act section 301 by adding the following subsection (e)

(e) Emergency exemption authority.

(1) **Scope.** The Administrator may, at his discretion, exempt any person from any provision of a regulation issued pursuant to sections 111, 112, or 213 (concerning nonroad engines such as those used in generators and pumps) of this chapter, or from any federal requirement created as a result of approval of a state implementation plan under title I of this chapter or a permit program under title V of this chapter, if the Administrator determines (A) that emergency conditions exist [due to an Act of God or another event that could not have reasonably been foreseen or prevented,] and (B) that it is in the public interest to grant the exemption in light of those emergency conditions, taking into account the public health and environmental consequences of granting the exemption. The Administrator, in making determinations under this paragraph, shall consult with the Governor of the State or States in which the emergency conditions exist or which would be directly affected by the exemption being considered.

(2) Terms of exemptions.

(A) Any exemption granted under this subsection shall expire on a date to be determined by the Administrator considering relevant factors such as the nature and likely duration of the emergency conditions and the public health and environmental consequences of granting the exemption. The Administrator may extend an exemption beyond its expiration date if he finds it in the public interest to do so.

(B) The Administrator may, at his discretion, subject any exemption granted under this subsection to any conditions that he deems appropriate for the purpose of minimizing the public health and environmental consequences of granting the exemption. The requirements of section 307(d) of this chapter and 5 U.S.C. sections 553 et seq. shall not apply to exemptions and conditions issued under this subsection.

(C) Any condition of an exemption granted under this subsection shall be enforceable in the same manner and to the same extent as the provision for which the exemption is granted.

(D) In the case of provisions that apply to particular geographical areas, the Administrator shall limit the exemption to the smallest geographical area necessary to address the emergency conditions.

(E) The requirements of section 307(d) of this chapter and of 5 U.S.C. sections 553 et seq. shall not apply to the Administrator's action under this subsection. The Administrator shall give appropriate public notice of his actions under this subsection as promptly as is reasonable in light of the circumstances.

Purpose of language: This provision would allow the Administrator to waive regulatory provisions issued under specified sections of the Clean Air Act, which address types of sources that are more likely to be affected by emergency conditions or efforts to address such conditions.

Legislative Changes Required
For Hurricane Katrina Response

Agency Name: U.S. Environmental Protection Agency

Legislative language requested:

Amend Clean Air Act section 301 by adding the following subsection (f)

(f) Emergency rulemaking authority. A determination by the Administrator that emergency conditions exist [due to an Act of God or another event that could not have reasonably been foreseen or prevented], and that it is in the public interest to expeditiously issue or revise a regulation under this chapter in light of those emergency conditions, shall constitute a sufficient finding of good cause for purposes of 5 U.S.C. section 553(b)(B), including the cross-reference to that provision in 42 U.S.C. section 7607(d).

Purpose of language:

In extraordinary situations like those following the September 11, 2001 attacks and Hurricane Katrina, it sometimes becomes evident that new or revised rules are required to address emerging threats to public health or welfare. This language would clarify that the existing good-cause exception would allow EPA to issue rules without prior notice and public comment where EPA makes a finding that expeditious promulgation is in the public interest.

**Legislative Changes Required for
Hurricane Katrina Response**

Agency Name: U.S. Environmental Protection Agency

Statute: Clean Air Act

Legislative language requested:

CAA § 172 Nonattainment plan provisions in general

Amend section 172 by adding a new subsection (f)

(f) Notwithstanding any other provision of this part, the Administrator is authorized to extend attainment dates for areas designated nonattainment for such period as the Administrator deems necessary to take into account the direct and indirect effects of an Act of God or another event that could not have reasonably been foreseen or prevented.

Purpose of language:

This proposal would modify section 172 by adding a new subsection authorizing the Administrator to extend attainment dates for nonattainment areas that have been affected, directly or indirectly, by an emergency like (and including) Hurricane Katrina. This is intended to provide assurance that such areas will not be penalized due to adverse air quality effects of such an emergency or actions taken in response to one.

**Legislative Changes Required for
Hurricane Katrina Response**

Agency Name: U.S. Environmental Protection Agency

Statute: Clean Air Act

Legislative language requested:

CAA § 172 Nonattainment plan provisions in general

Amend section 172 by adding a new subsection (f)

(f) Notwithstanding any other provision of this part, the Administrator is authorized to extend attainment dates for areas designated nonattainment for such period as the Administrator deems necessary to take into account the direct and indirect effects of an Act of God or another event that could not have reasonably been foreseen or prevented.

Purpose of language:

This proposal would modify section 172 by adding a new subsection authorizing the Administrator to extend attainment dates for nonattainment areas that have been affected, directly or indirectly, by an emergency like (and including) Hurricane Katrina. This is intended to provide assurance that such areas will not be penalized due to adverse air quality effects of such an emergency or actions taken in response to one.

Legislative Changes Required
For Hurricane Katrina Response

Agency Name: U.S. Environmental Protection Agency

Legislative language requested:

Amend Clean Air Act section 301 by adding the following subsection (g)

(e) Emergency exemption authority on use of pumps and generators.

(1) **Scope.** The Administrator may, at his discretion, exempt any person from any requirement under this Act that regulates the sale, introduction into commerce, use, fueling, or operation of nonroad engines or equipment used for generation of electricity, pumping, or other activities, if the Administrator determines (A) that emergency conditions exist [due to an Act of God or another event that could not have reasonably been foreseen or prevented,] and (B) that it is in the public interest to grant the exemption in light of those emergency conditions, taking into account the public health and environmental consequences of granting the exemption. The Administrator, in making determinations under this paragraph, shall consult with the Governor of the State or States in which the emergency conditions exist or which would be directly affected by the exemption being considered.

(2) Terms of exemptions.

(A) Any exemption granted under this subsection shall expire on a date to be determined by the Administrator considering relevant factors such as the nature and likely duration of the emergency conditions and the public health and environmental consequences of granting the exemption. The Administrator may extend an exemption beyond its expiration date if he finds it in the public interest to do so.

(B) The Administrator may, at his discretion, subject any exemption granted under this subsection to any conditions that he deems appropriate for the purpose of minimizing the public health and environmental consequences of granting the exemption. The requirements of section 307(d) of this chapter and 5 U.S.C. sections 553 et seq. shall not apply to exemptions and conditions issued under this subsection.

(C) Any condition of an exemption granted under this subsection shall be enforceable in the same manner and to the same extent as the provision for which the exemption is granted.

(D) In the case of provisions that apply to particular geographical areas, the Administrator shall limit the exemption to the smallest geographical area necessary to address the emergency conditions.

(E) The requirements of section 307(d) of this chapter and of 5 U.S.C. sections 553 et seq. shall not apply to the Administrator's action under this subsection. The Administrator shall give appropriate public notice of his actions under this subsection as promptly as is reasonable in light of the circumstances.

Purpose of language: This provision would allow the Administrator to waive regulatory provisions pertaining to demolition of damaged facilities, including asbestos-containing materials, in light of an emergency, to the extent those provisions apply.

Legislative Changes Required for Hurricane Katrina Response

Agency Name: U.S. Environmental Protection Agency

Statute: Clean Air Act

Legislative language requested: Section 176(c) Transformation Conformity

SECTION 1. CLEAN AIR TRANSPORTATION CONFORMITY; TEMPORARY WAIVER FOR LOUISIANA AREAS.

(a) Temporary Waiver.--Notwithstanding any other provision of law, until September 30, 2007, the provisions of section 176(c) of the Clean Air Act, and the regulations promulgated thereunder, shall not apply to transportation projects, programs, and plans (as defined in 40 C.F.R. Part 93, Subpart A) for the parishes of Ascension, East Baton Rouge, Iberville, Livingston and West Baton Rouge. The preceding sentence shall not apply to the regulations under section 176(c)(4)(D)(i) of such Act relating to Federal and State interagency consultation procedures.

(b) Interim Progress Report.--Not later than October 1, 2006, the Governor of Louisiana shall submit to the Committees on Energy and Commerce and Transportation and Infrastructure of the House of Representatives, the Committee on Environment and Public Works of the Senate, the Administrator of the Environmental Protection Agency, and the Secretary of Transportation a report regarding the status of the State's progress towards achieving compliance with the provisions of law and regulation subject to the temporary waiver provided by subsection (a). Such report shall explain in detail the steps that the State has taken towards achieving such compliance and identify the necessary steps that remain to be taken by September 30, 2007, in order for the transportation projects, programs, and plans for the parishes referred to in subsection (a) to be in compliance with the provisions of section 176(c) of the Clean Air Act, and the regulations promulgated thereunder, by September 30, 2007. The report shall also include a regional emissions analysis generally consistent with the requirements of 40 C.F.R. 93.122, together with relevant air quality data.

SEC. 2. METROPOLITAN PLANNING REQUIREMENTS; TEMPORARY WAIVER FOR LOUISIANA AREAS.

Notwithstanding any other provision of law, until September 30, 2007, the provisions of section 134 of title 23 of the United States Code and the regulations promulgated thereunder, shall not apply to the Metropolitan Planning Organization for the Baton Rouge area as designated under section 134 of title 23 of the United States Code.

SEC. 3. ADDITIONAL REQUIREMENTS.

(a) Projects that Expand Capacity.--During the period of the temporary transportation conformity waiver for transportation plans, programs, and projects under section 1, regionally significant capacity expanding highway projects shall only be added to the Regional Transportation Plan for the parishes referred to in section 1, and projects may only be advanced from the out years of the Plan into the Transportation Improvement Program, as provided in subsection (b).

(b) Exception.--Any regionally significant capacity expanding highway project in the parishes referred to in section 1 may be added to the Plan or advanced from the out years of the Plan referred to in subsection (a) if--

- (1) the project is necessary for recovery efforts or is part of a redevelopment plan for the portion of Louisiana substantially impacted by Hurricane Katrina and is subject to NEPA and state environmental laws, as applicable; and
- (2) any projected increases in transportation related emissions resulting from the project are offset by corresponding emission reductions within the area covered by the parishes referred to in section 1, with best efforts made to secure reductions from within the immediate area affected by the project's emissions.

Purpose of language:

To provide a temporary waiver from certain transportation conformity requirements and metropolitan transportation planning requirements under the Clean Air Act and under other transportation planning laws for certain areas in Louisiana where transportation facilities have been damaged or destroyed by Hurricane Katrina, and/or where significant transportation improvements will be required as part of the overall area's recovery from the effects of the hurricane. This temporary waiver is limited to the greater Baton Rouge area because Baton Rouge is the only area within the southeast region affected by Hurricane Katrina that requires relief from the transportation conformity requirements of the Clean Air Act.